

MARK VAN BERGH, ESQ.*
1625 S. Nelson St.
Arlington, VA 22204

Telephone: (703) 671-7335
Mobile: (703) 298-4870
mvanbergh@comcast.net

*Admitted only in District of Columbia

May 3, 2019

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Presentation
Applications of T-Mobile US, Inc. and Sprint Corporation for
Consent to Transfer Control of Licenses and Authorizations
WT Docket No. 18-197;
Transforming the 2.5 GHz Band
WT Docket No. 18-120**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. Section 1.1206(b), notice is hereby provided of oral *ex parte* presentations in the above-referenced proceedings. On May 1, 2019, John Schwartz, Chief Executive of Voqal; Katherine Messier, Director of Development, North American Catholic Educational Programming Foundation, Inc. ("NACEPF") and Executive Director of Mobile Beacon, a wholly-owned NACEPF subsidiary; Alan Hill, President of the J.A. Hill Group; and undersigned counsel (together the "Participants"), had separate meetings with Commissioner Michael O'Rielly and his legal advisor, Erin McGrath; Aaron Goldberger, legal advisor to Chairman Pai; and Umair Javed, legal advisor to Commissioner Rosenworcel.

The Participants discussed and answered questions regarding the attached documents related to the Sprint/T-Mobile merger and Voqal's proposed divestiture condition as set forth in its March 4 confidential written *ex parte* presentation.¹ Such a remedy is necessary if the merger is approved to ensure that more than one operator has access to 2.5 GHz spectrum to support rapid, nationwide 5G competition and to restore competition in the market for EBS spectrum.

The Participants also discussed the concerns expressed in the written *ex parte* presentation that NACEPF and Mobile Beacon recently filed concerning the proposed merger

¹ Voqal, Written *Ex Parte* Presentation, WT Docket 18-197 (March 4, 2019). Voqal filed a redacted copy of the presentation via ECFS on March 5, 2019.

FCC Secretary
May 3, 2019
Page 2

and its interconnection with the Commission's pending EBS rulemaking proceeding in WT Docket 18-120, *Transforming the 2.5 GHz Band*.² In that filing, NACEPF and Mobile Beacon documented that the Commission's decision regarding the pending Sprint and T-Mobile applications would inflict significant, merger-specific harms on EBS licensees and the low-income and rural populations they serve if certain proposed changes to the EBS rules are adopted. The Participants also pointed to matters discussed in the recent written *ex parte* that NACEPF and Mobile Beacon filed in the rulemaking docket (April 25, 2019).³

Please contact undersigned counsel should any question arise concerning this matter or if additional information is required.

Sincerely,

/s/ Mark Van Bergh

Mark Van Bergh

cc: Commissioner Michael O'Rielly
Erin McGrath
Aaron Goldberger
Umair Javed

² North American Catholic Educational Programming Foundation, Inc. and Mobile Beacon, Written *Ex Parte* Presentation, WT Docket 18-197 (April 2, 2019).

³ North American Catholic Educational Programming Foundation, Inc. and Mobile Beacon, Written *Ex Parte* Presentation, WT Docket 18-120 (April 25, 2019).

Sprint/T-Mobile Merger

2.5 GHz Spectrum Issues and Voqal's Proposed Divestiture Condition

Proposed Merger Harm - will give New T-Mobile a dominant position in indispensable 2.5 GHz mid-band spectrum causing harm to EBS licensees and broadband consumers

- **Harms to EBS licensees:**
 - New T-Mobile would have less incentive to share the spectrum
 - New T-Mobile would have monopsony power in lease negotiations, and, unlike Sprint, would have both enhanced ability and incentive to exploit this monopsony power to achieve anticompetitive lease terms.
 - Other carriers less likely to seek EBS spectrum as it becomes available
 - New T-Mobile would have greater resources to acquire white space spectrum
- **Harms to Broadband Consumers:**
 - New T-Mobile would materially exceed spectrum screen in 65% of US counties
 - New T-Mobile would hold almost all 2.5 GHz spectrum for developing 5G
 - Limits ability of large and small carriers to deploy a competitive 5G service
 - End result is higher cost, lower quality 5G than would occur in a competitive market

2.5 GHz is "Sweet Spot" for 5G

- Better propagation than high-band; fewer engineering problems than low-band
- Wide, contiguous blocks of spectrum essential for deploying 5G
- Sprint dominates local 2.5 GHz markets (EBS and BRS)

2.5 GHz is Central to New T-Mobile's 5G Plans and Alleged Consumer Benefits

- Necessary to provide superior 5G network
- Both T-Mobile and Sprint and industry observers say there are no viable mid-band alternatives for 5G

Proposed Divestiture Condition – Would divide 2.5 GHz band into "top" and "bottom" halves and require divestiture of "Top Half" (Voqal March 4, 2019 *Ex Parte*)

- **Top Half Divestiture** – 2596-2690 MHz:
 - 94 MHz total
 - 70.5 MHz of BRS spectrum (mostly licensed to Sprint)
 - 23.5 MHz of EBS G-Group and K block channels (mostly leased to Sprint)
- **Licensed Spectrum (BRS)** – New T-Mobile would divest within one year of closing
- **Leased Spectrum (EBS G-Group)** – For 3 years from closing, New T-Mobile would offer the right to terminate existing leases with Sprint at any time, upon 6 months' notice, without consideration or penalty

- **Alternative Recommendation – Bottom Half Divestiture - 2496-2596 MHz:**
 - 100 MHz total
 - EBS spectrum, A-Group through D-Group (mostly leased to Sprint)
 - BRS channel 1
 - Licensed EBS spectrum would use similar method as EBS G-Group under “Top Half” proposal
 - BRS channel 1 divestiture follows EBS divestiture, 3-4 years after closing
- **Advantages of Top Half Divestiture**
 - Most effective way to stimulate 5G competition, placing significant 2.5 GHz spectrum in the hands of a national competitor
 - Easier to implement with sale of licensed BRS spectrum; fewer EBS leases involved
 - New T-Mobile retains significant 2.5 GHz spectrum under Sprint’s existing leases
 - Voluntary participation of affected EBS licensees
 - Allows EBS licensees to retain existing levels of access to a nationwide network in providing their educational programs, protecting existing service to educational institutions and low-income families
 - BRS licensed on BTA-wide basis providing wider geographic coverage and less reliant on outcome of EBS rulemaking involving EBS white space allocation

BRS-EBS BAND PLAN – POST TRANSITION AT 2495-2690 MHz

SOURCE: <http://wireless.fcc.gov/services/brsebs/data/BRS-EBS-BandPlans.pdf>

